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REMARKS

This response is in response to the non-final Office Action mailed February 22, 2007. Claims 1 and 3-21 are pending and rejected. By this response, Applicants have amended independent claim 1.

In view of the foregoing amendments and the following discussion, Applicants submit that none of the claims now pending in the application are anticipated or obvious under the respective provisions of 35 U.S.C. §§102 and 103. Thus, Applicants believe that all of these claims are now in allowable form.

It is to be understood that Applicants, by amending the claims, do not acquiesce to the Examiner's characterizations of the art of record or to Applicants' subject matter recited in the pending claims. Further, Applicants are not acquiescing to the Examiner's statements as to the applicability of the prior art of record to the pending claims by filing the instant response including claims.

Amendments to the Claims

By this response, claim 1 has been amended. The amendments to the claims are fully supported by the Specification, Drawings and Claims as originally filed. For example, at least Applicants' specification page 6, lines 19-20 teaches that an advertisement comprises audio and data video being broadcast on the distribution network.

Thus, no new matter has been added, and the Examiner is respectfully requested to enter the amendments.

35 U.S.C. §102 Rejection of claims 1, 3-5, and 9-21

The Examiner has rejected claims 1, 3-5, and 9-21 under 35 U.S.C. §102(e) as being unpatentable over Fries (US 6317885, hereinafter Fries). Applicants respectfully traverse the rejection.

Applicants' independent claim 1 recites:

1. A data structure stored on computer readable media, the data structure comprising:

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one or more data tags, each data tag used to provide information regarding a broadcast advertisement interspersed within broadcast programs or presented within an electronic program guide, wherein said broadcast advertisement comprises audio and video data; and

one or more electronic program guide action tags, each electronic program guide action tag used to define a valid electronic program guide feature that may be accessed from within the broadcast advertisement, the electronic program guide feature being related to at least one of the broadcast advertisement and a program associated with the broadcast advertisement;

the data structure operative to provide a link between the broadcast advertisement and the electronic program guide to provide access to electronic program guide features defined by the electronic program guide action tags from within the broadcast advertisement, the electronic program guide being represented by a signal generated by a set top terminal using software programs stored in a memory of the set top terminal, wherein the software programs at the set top terminal interpret the data structure to provide the link and determine electronic program guide controls that is presented and used in conjunction with the broadcast advertisement, wherein the data structure is formatted in combination with the broadcast advertisement for broadcast to the set top terminal. (Emphasis added).

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. Fries fails to disclose each and every element of the claimed invention, as arranged in claim 1.

Specifically, the Fries reference fails to disclose at least "one or more data tags, each data tag used to provide information regarding a broadcast advertisement interspersed within broadcast programs or presented within an electronic program guide, wherein said broadcast advertisement comprises audio and video data."

The Fries reference discloses an "interactive entertainment and information system using a television set-top box, wherein pages of information are periodically provided to the set-top box for user interaction therewith." (See Fries, Abstract.) A subscriber tunes to a specified channel reserved for the Information Service. (See Fries, col. 6, ll. 43-45.) Alternatively, the user pushes a button on the remote to display an initial page image with links to other pages. (See Fries, col. 7, ll. 34-43.)

Applicants respectfully submit that the Examiner has interpreted Fries too broadly. Fries fails to teach or to suggest providing information regarding a broadcast advertisement. Fries at best teaches a "default (home) page" that is displayed when

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[the] particular Information Service channel is selected. (See Fries, col. 6, ll. 56-58.) Applicants respectfully submit that the "default (home) page" is not a broadcast advertisement.

Even if the Examiner maintains his unduly broad interpretation of Fries, Fries clearly fails to teach or to suggest where a broadcast advertisement is interspersed within broadcast programs or presented within an electronic program guide. In contrast, Fries clearly teaches that a subscriber tunes to a specified channel reserved for the Information Service or the user pushes a button on the remote to display an initial page image with links to other pages. (See Fries, col. 6, ll. 43-45; col. 7, ll. 34-43.) Thus, Applicants' invention allows broadcast advertisements to appear passively to a viewer.

The Examiner responds to the Applicants' arguments in the office action dated February 22, 2007 by asserting 1) that the Applicants' claim is a Markush type claim and that 2) the elements 110 taught by Fries represent broadcast advertisements. (See p. 2, ll. 15-18.) The Applicants respectfully submit that the Applicants' claim is clearly not written in Markush type format. Markush type claims typically include the language "selected from a group consisting of A, B and C". (See MPEP, 803.02) Such language is absent from the Applicants' claims. Therefore, the Applicants' claims are not Markush claims.

Regardless, the Applicants respectfully submit that the icons (element 110) taught by Fries are not broadcast advertisements, as claimed by the Applicants' invention. Broadcast advertisements as defined by the Applicants claims include audio and video data. For example, they may be live Infomercials. In stark contrast, the icons taught by Fries are static graphical icons that do not contain audio and video data as positively recited by Applicants Independent claim 1.

Furthermore, Applicants' invention provides advantages over Fries. For example, a user may see a broadcast advertisement for a program they otherwise may not have watched and access EPG features from within the broadcast advertisement, such as for example, setting a reminder or setting a recording of the program. (See for example Applicants' Specification, p. 11, l. 20 – p. 12, l. 6.) In contrast, Fries requires a user to actively seek out broadcast advertisements because the user either must 1)

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tune to a specified channel or 2) consciously decided to press a button on a remote to activate a top level page.

As such, Applicants submit that independent claim 1 is not anticipated and fully satisfies the requirements of 35 U.S.C. §102 and is patentable thereunder. Moreover, claim 21 contains substantially similar relevant limitations as those discussed above in regards to claim 1, and thus is also patentable under 35 U.S.C. §102. Furthermore, claims 3-5 and 9-20 depend, either directly or indirectly, from independent claim 1 and recite additional limitations thereof. As such and at least for the same reasons as discussed above, Applicants submit that these dependent claims also are not anticipated, fully satisfy the requirements of 35 U.S.C. §102, and are patentable thereunder.

Therefore, Applicants respectfully request that the Examiner's rejection of claims 1, 3-5, and 9-21 be withdrawn.

35 U.S.C. §103(a) Rejection of Claims 6-8

The Examiner has rejected claims 6-8 under 35 U.S.C. §103(a) as being unpatentable over Fries in view of Lawler et al. (US 5805763, hereinafter Lawler). Applicants respectfully traverse the rejection.

To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. As discussed above in response to the Examiner's §102 rejection, Fries fails to teach or suggest all of the limitations recited in claim 1, and thus fail to teach or suggest Applicants' invention as a whole.

Claims 6-8 depend indirectly from independent claim 1 and recite additional limitations thereof. Moreover, for at least the reasons discussed above, the Fries reference fail to teach or suggest Applicants' invention as recited in claim 1. Accordingly, any attempted combination of the Fries reference with Lawler, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claims because Lawler does not teach or

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suggest the missing limitations. As such, Applicants submit that dependent claims 6-8 are non-obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that the Examiner's rejection of claims 6-8 be withdrawn.

CONCLUSION

Thus, Applicants submit that none of the claims presently in the application are anticipated or obvious under the respective provisions of 35 U.S.C. §§102 and 103. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall or Jimmy Kim, at (732) 530-9404, so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

Dated: 5/16/07

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